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OGC 70-1964

OGC HAS REVIEWED

23 November 1970

MEMORANDUM FOR: Director of Personnel

SUBJECT: Agency Overseas Medical Program

REFERENCE: Memo fr D/MS to D/Pers dtd 10 Sept 70;
Subject: Extent of Overseas Medical
Benefits for Dependents--Case of Son of

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1. The referent memorandum was forwarded to this office for consideration of the legal aspects. The Director of Medical Services points out that he cannot state that the son's illness in this case was clearly caused by residence abroad. On the other hand, he does conclude that overseas residence contributed to the illness. In such a situation, therefore, the Director of Medical Services finds difficulty in approving a waiver of treatment at Government expense beyond a period of 120 days since the statute concerned and our regulation [] provide that the waiver can only be granted if the Director of Medical Services determines in writing "that the illness or injury is clearly caused by the fact that the dependent is or has been located abroad."

2. Since the Agency authority in this area was adopted by the Agency from State Department's statutory authority, we looked at their regulations implementing the statute. Their regulation, 3 FAM 685.2c, provides that the Medical Director has the authority to extend treatment at Government expense beyond 120 days in those cases in which he determines the illness or injury is "clearly caused or materially aggravated by the fact that the patient is or has been located abroad." The regulation further included what might be called a "but for" rule saying that "such determination shall be made the basis of whether it may be reasonably assumed that the patient would not have incurred the illness or injury had he remained in the U. S."

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declassification

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3. In our view the above regulatory wording is extremely important in determining how far the Director of Medical Services may go in making his determination. While at first look it may appear that such wording broadens the statutory language, we have found through research that analogous statutory words have been interpreted rather broadly by numerous courts in attempting to do equity in particular fact situations consistent with the spirit of the legislation involved. Consequently, it is our view that if this Agency had the same regulatory provisions as does the State Department, and if the Director of Medical Services can determine that overseas residence contributed to the illness, he could appropriately approve a waiver of the 120-day period.

4. The question has also been raised whether the Agency may in any way limit the reimbursement of medical expense once it does grant a waiver. The statute which we adopted provides that "the Secretary may, in accordance with such regulation as he may prescribe, pay" In our view, the Agency may, by appropriate regulation and policy decision, limit the maximum amount of benefits whether or not waiver is granted. It certainly would not be unreasonable to provide for periodic review of Government payment of benefits after the initial waiver, leaving in a designated official the authority to reduce or discontinue benefits, utilizing some reasonable standards in making such determination.

5. In the absence of formalized regulations establishing Agency policy to include (a) the State Department regulatory provisions and (b) limitations on benefits after waiver of the 120-day period, there would be no legal objection to the Deputy Director for Support, as the approving authority for regulations, affirming that these matters are and were intended to be a part of the Agency policy in administering the overseas medical program. After such affirmation, there would be no legal objection in applying such policy to cases arising prior to this date. 25X1

JOHN S. WARNER
Deputy General Counsel

cc: OMS
✓OGC Subject - MEDICAL
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